IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 10TH SEPTEMBER 2007 / 19TH BHADRA 1929

Bail Appl..No. 5220 of 2007()

CRIME NO.124/2007 OF NADAPURAM POLICE STATION

: PETITIONERS/ACCUSED NO.5 & 8

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1. KOVUMMAL RIJAS, S/O.AMMED, AGED 21 YEARS, VELLORE AMSOM, CHALAPPURAM DESOM, VADAKARA TALUK, KOZHIKODE DT.

2. NAMBIKKUNNUMMAL MUJEEB @ MUJEEBRAHMAN, S/O.POCKER, AGED 21 YEARS, NAMBIKKUNNUMMAL HOUSE, VELLORE AMSOM, CHALAPPURAM DESOM, VADAKARA TALUK, KOZHIKODE DT.

BY ADV. SRI.P.SANJAY

RESPONDENTS: COMPLAINANT

STATE OF KERALA REPD. BY THE SUB INSPECTOR OF POLICE, NADAPURAM POLICE STATION, THROUGH THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 10/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.5220 of 2007

Dated this the 10th day of September, 2007

ORDER

Application for anticipatory bail. The petitioners, whose names were not there in the F.I.R have now been arrayed as an accused after completing the investigation. Final report has been filed, it is submitted. Cognizance has been taken by the learned Magistrate. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. It is prayed that direction under Section 438 Cr.P.C may be issued in favour of the petitioners.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that investigation having already been completed, the final report having already been filed and cognizance having already been taken by the learned Magistrate, it is for the petitioners to appear before the learned Magistrate and seek regular bail in the ordinary course. There are no circumstances justifying the invocation of the discretion under Section 438 Cr.P.C, submits the learned Public Prosecutor.

4. I find merit in the opposition by the learned Public Prosecutor . After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is well settled that powers under Section 438 Cr.P.C can be invoked even in favour of an accused who apprehends arrest in execution of a non bailable warrant issued in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I do not find any such reasons in this case.

3. It is for the petitioners to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which they could not earlier appear before the Investigating Officer or the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

4. This application is, in these circumstances, dismissed, but with the specific observation that if the petitioners appear before the learned Magistrate and apply for bail after giving sufficient prior notice

to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself.

(R.BASANT, JUDGE)

rtr/-